

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re: IN RE ATG CATALYTICS,

Debtor.

ROBERT I. HANFLING, Chapter 7 Trustee,

Plaintiff,

v.

EPSTEIN, BECKER & GREEN, P.C,

JOHN PRESTON, CHRISTOPHER
NAGEL, EUGENE BERMAN, ETHAN
JACKS, QUANTUM CATALYTICS LLC,
ABC CORPS 1 through 5, and JOHN
DOES 1 through 5,

Defendants.

Nos. C-04-1450/ 04-4026 PJH
BK Adv. Case No. 03-4806

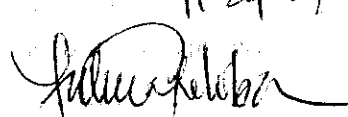
**ORDER GRANTING
WITHDRAWAL
OF REFERENCE AS TO
REMAINING DEFENDANTS;
GRANTING DEFENDANTS'
MOTION TO TRANSFER VENUE;
VACATING DECEMBER 1, 2004
HEARING¹**

BACKGROUND

Plaintiff, the chapter 11 trustee for debtor ("ATG"), filed the instant adversary case on behalf of ATG against multiple defendants before the bankruptcy court on December 2, 2003. The lawsuit involved numerous claims, including fraud, misrepresentation, negligence, and breach of contract, arising from debtor ATG's purchase of assets from the bankruptcy estate of Molten Metal Technologies, Inc. ("MMT").

On July 19, 2004, this court withdrew the bankruptcy court's reference in C-04-1450

¹ Pursuant to Civil Local Rule 7-13, this order may not be cited except as provided by Civil Local Rule 3-4(e).

11-24-04


1 PJH as to defendant EBG *only* because, at that time, EBG was the only defendant among
2 several in the underlying adversary case to request withdrawal of the bankruptcy court's
3 reference. Subsequently, on August 20, 2004, EBG filed with this court
4 a motion to transfer venue to Massachusetts. At the September 29, 2004 hearing on
5 EBG's motion, this court advised the parties that in the interests of judicial economy,
6 defendant EBG's motion would be continued until all defendants were before this court. At
7 that hearing, Chapter 7 trustee's counsel advised the court that the trustee would consent to
8 withdrawal of the reference as to all defendants and to transfer of the entire case at the time
9 withdrawal had been effected as to all defendants.

10 The remaining defendants subsequently sought withdrawal of the bankruptcy court's
11 reference; and on October 28, 2004, this court related the case involving the remaining
12 defendants, C-04-4026 CW, to C-04-1450 PJH.

13 In a November 23, 2004 joint status report filed with this court, counsel for all
14 defendants and the Chapter 7 trustee advised the court that the remaining defendants join in
15 EBG's motion to transfer venue. Additionally, the parties advised the court that the Chapter 7
16 trustee consents to withdrawal of the reference as to remaining defendants, and consents to
17 transfer of the entire case to the District Court of Massachusetts (Boston).

18 ORDER

19 GOOD CAUSE APPEARING this court GRANTS the remaining defendants' motion to
20 withdraw the bankruptcy court's reference pursuant to 28 U.S.C. § 157(d). *See In re Security*
21 *Farms*, 124 F.3d 999, 1008 (9th Cir. 1997) (court should consider "the efficient use of judicial
22 resources, delay and costs to the parties, uniformity of bankruptcy administration, the
23 prevention of forum shopping, and other related factors," including jury trial right).

24 Additionally, for the reasons discussed on the record at the September 29, 2004
25 hearing on EBG's motion to transfer venue, the court GRANTS defendants' motion to transfer
26 venue to the District Court of Massachusetts (Boston) pursuant to 28 U.S.C. §§ 1404(a) and
27 1412. *See Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988); *see also* 1 Collier on
28

1 Bankruptcy, § 4.04[4][a] (2004 ed.); *Abbey v. Modern Africa One, LLC*, 305 B.R. 594, 600-
2 602 (D.D.C. 2004) (treating motion to transfer venue in adversary proceeding as one under
3 both §§ 1404(a) and 1412).

4 The December 1, 2004 hearing is VACATED.

5 **IT IS SO ORDERED.**
6

7 Dated: November ____, 2004

8 /s/
9 PHYLLIS J. HAMILTON
United States District Judge

United States District Court
For the Northern District of California

CLOSED, E-Filing, RELATE

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:04-cv-04026-PJH**

Hanfling et al v. Epstein Becker & Green P.C. et al
Assigned to: Hon. Phyllis J. Hamilton
Demand: \$0
Cause: 28:0157 Motion for Withdrawal of Reference

Date Filed: 09/22/2004
Jury Demand: None
Nature of Suit: 423 Bankruptcy
Withdrawal
Jurisdiction: Federal Question

Plaintiff

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Plaintiff

ATG Catalytics LLC

V.

Defendant

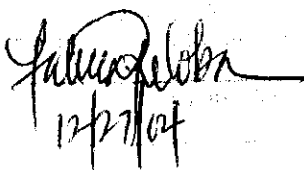
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Date Filed	#	Docket Text
09/22/2004	 1	Withdrawal of Bankruptcy Reference; Bankruptcy Court case number 01-46389 N 11. Filed by Eugene Berman, Ethan Jacks, Christopher Nagel, John Preston, Quantum Catalytics LLC. (cp, COURT STAFF) (Filed on 9/22/2004) (Entered: 09/27/2004)
09/22/2004	 2	ORDER SETTING CASE MANAGEMENT CONFERENCE: Case Management Conference set for 1/7/2005 01:30 PM. (cp, COURT STAFF) (Filed on 9/22/2004) Additional attachment(s) added on 9/28/2004 (cp, COURT STAFF). (Entered: 09/27/2004)
09/22/2004		CASE DESIGNATED for Electronic Filing. (cp, COURT STAFF) (Filed on 9/22/2004) (Entered: 09/27/2004)
10/21/2004	 3	NOTICE of Related Case <i>re Adversary Proceedings</i> (Crosby, Peter) (Filed on 10/21/2004) (Entered: 10/21/2004)
10/28/2004	 4	ORDER RELATING CASE. C-04-1450 PJH and C-04-4026 CW are related within the meaning of Civil L.R. 3-12(b). Pursuant to Civil L.R. 3-12(e), the Clerk of Court is ordered to reassign the later-filed action to Judge Hamilton. All matters presently scheduled for hearing in the reassigned case are vacated, and must be renoticed for hearing. Signed by Judge Phyllis J. Hamilton on 10/28/04. (lm, COURT STAFF) (Filed on 10/28/2004) (Entered: 10/28/2004)
10/28/2004		Case reassigned to Judge Phyllis J. Hamilton. Judge Claudia Wilken no longer assigned to the case. (cp, COURT STAFF) (Filed on 10/28/2004) (Entered: 10/29/2004)
11/10/2004	 5	ORDER SETTING CASE MANAGEMENT CONFERENCE: the csse having been reassigned to the Honorable Phyllis J. Hamilton; a Case Management Conference will be held on 1/6/05 at 2:30 P.M. A Joint Case Management Conference Statement shall be filed by 12/30/04. Signed by Judge Phyllis J. Hamilton on 11/10/04. (lm, COURT STAFF) (Filed on

		11/10/2004) (Entered: 11/10/2004)
11/15/2004	● <u>6</u>	ORDER re: EBG's cont'd mot to transfer venue; addl defendants' mot to w/d reference. Signed by Judge Hamilton on 11/15/04. (pjhlc3,) (Filed on 11/15/2004) (Entered: 11/15/2004)
11/24/2004	● <u>7</u>	ORDER granting w/d of reference; granting mot to transfer venue; vacating hrg. Signed by Judge Hamilton on 11/24/04. (pjhlc3,) (Filed on 11/24/2004) (Entered: 11/24/2004)